
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Fifth Street Funding, Inc.)	File No. EB-FIELDWR-13-00007278
Antenna Structure Registrant)	
ASR # 1230377)	NOV No. V201332900017
Los Angeles, California)	
)	

NOTICE OF VIOLATION

Released: March 26, 2013

By the Acting District Director, Los Angeles Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules),¹ to Fifth Street Funding, Inc., registrant of Antenna Structure #1230377 in Los Angeles, California. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violations noted herein.²

2. On February 14 and 20, 2013, an agent of the Enforcement Bureau's Los Angeles Office inspected Antenna Structure #1230377 located in Los Angeles, California, and observed the following violations:

- a. 47 C.F.R. § 17.4(g): "The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure." During the inspection on February 14, 2013, the agent observed that no Antenna Structure Registration Number was posted at the base of antenna structure.
- b. 47 C.F.R. § 17.23: "Unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard," as referenced in the . . . FAA Advisory Circulars" Antenna Structure #1230377 is required to have red

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

Federal Communications Commission

obstruction lights to increase conspicuity during nighttime along with daytime and twilight marking. At the time of inspections, the agent observed that the antenna structure had no marking and exhibited no red obstruction lighting at nighttime.

- c. 47 C.F.R. § 17.48: “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: (a) Shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.” On February 15, 2013, the agent called the Federal Aviation Administration (FAA) and reported the tower light outage. A current NOTAM was not in effect. The registrant, Fifth Street Funding, had failed to notify the FAA of the tower light outage.
- d. 47 C.F.R. § 17.47(a): “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: (1) shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.” During the interview with the agent on February 14, 2013, a property manager on-site acknowledged that Fifth Street Funding did not make any observation of the antenna structure's lights and that the company did not have any automatic alarm system designed to detect the failure of those lights.
- e. 47 C.F.R. § 17.49: “The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include the following information for each such event: (a) The nature of such extinguishment or improper functioning, (b) The date and time the extinguishment or improper operation was observed or otherwise noted.” During the interview with the agent on February 14, 2013, the property manager stated that Fifth Street Funding did not observe the tower lights regularly and did not have any record of tower light observations.
- f. 47 C.F.R. § 17.57: “The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately

Federal Communications Commission

notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.” The FCC’s antenna structure registration database currently lists the status of Antenna Structure #1230377 as “Granted” even though the structure has been constructed.

3. Pursuant to Section 403 of the Communications Act of 1934, as amended,³ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Fifth Street Funding must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁴

4. In accordance with Section 1.16 of the Rules, we direct Fifth Street Funding to support the response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Fifth Street Funding with personal knowledge of the representations provided in Fifth Street Funding’s response, verifying the truth and accuracy of the information therein,⁵ and confirming that all of the information requested by this Notice which is in the regulatee’s possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁶

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission
Los Angeles Office
18000 Studebaker Rd., #660
Cerritos, CA 90703

6. This Notice shall be sent to Fifth Street Funding, Inc., at its address of record.

³ 47 U.S.C. § 403.

⁴ 47 C.F.R. § 1.89(c).

⁵ Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

⁶ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

Federal Communications Commission

7. The Privacy Act of 1974⁷ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler
Acting District Director
Los Angeles Office
Western Region
Enforcement Bureau

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).